ceive water through the main pipes was not a mere licence revocable at the will of the owner of the premises and that a mandatory injunction could be issued to compel the owner to permit the free flow of water through the main pipes which the owner had stopped.

In the granting of a mandatory and interlocutory injunction the court has to exercise a judicial discretion and weigh the amount of damage done or threatened to be done to the plaintiff and compare it with the damage which the granting of an injunction would inflict upon the defendant, but in the first instance the court has to consider the plaintiff's case and the rights which have been interfered with and the court is bound to protect those rights unless by doing so it will inflict such hardship upon the defendant as may amount to injustice. Bearing that in mind I do not think any injustice will be done to the defendant if the parties are put back to the same position which they occupied before March 1970. An injunction is granted to restore *status quo ante* and it is that which I propose to do. In the circumstances the defendant is hereby restrained and an injunction is issued against her. The defendant is ordered to unlock the water tap forthwith and to open the door leading to the air-well, the kitchen, the bathroom and the toilet and allow the plaintiff to have free access to the toilet, bathroom and the kitchen. She is further ordered to allow the free flow of water in the water taps. This order and the injunction will remain effective only until such time as this suit is finally decided. The parties will have liberty to apply. The costs of this application will be paid by the defendant. I further direct that an early date for the hearing of the suit be fixed.

Injunction granted.

Solicitors: *Koh Kim Leng & Co.; Tan Chee Lan & Co.*

CHANDRASEKARAN & ORS. v. PUBLIC PROSECUTOR

[A.Cr.J. (Raja Azlan Shah J.) November 24, 1970]

[Kuala Lumpur — Criminal Appeal No. 77 of 1970]

Bribery and Corruption — Abetment of offences under the Act — Conspiracy — Evidence Ordinance, 1950, s. 10 — Prevention of Corruption Act, 1961, ss. 41(c), 11.

Bribery and Corruption — Evidence of a co-accused — Need for corroboration — Evidence relied on to provide corroboration — Prevention of Corruption Act, 1961, s. 19.

Bribery and Corruption — Cautioned statement of accused — Statement obtained by compulsion — Whether statements admissible if they lead to discovery of fact — Evidence Ordinance, 1950, s. 27 — Prevention of Corruption Act, 1961, s. 15.

Criminal Law and Procedure — Statement of witness to police — Whether accused entitled to copy of statement — Criminal Procedure Code (Cap. 6), s. 113(i).

Evidence — Conduct of accused — Whether admissible — Expert evidence — Admissibility of typewriting evidence — Evidence Ordinance, 1950, ss. 8 and 45.

This was an appeal against the conviction of the appellants on charges under the Prevention of Corruption Act, 1961. The evidence showed that there was a conspiracy to defraud the Government by means of forged vouchers. The appellants were charged with and convicted of abetment of the offence of defrauding the Government. On appeal it was argued, *inter alia:* (1) the learned president was wrong in treating a witness who had been originally charged with the appellants and who had given evidence under section 19 of the Prevention of Corruption Act, 1961, as a "peripheral accomplice"; (2) there was no or insufficient corroboration of the evidence of the witness; (3) the statements made by the second appellant which had been rejected by the learned president on the ground that they had been obtained by compulsion, was wrongly admitted under section 27 of the Evidence Ordinance; (4) typewritng evidence was wrongly admitted in this case; (5) evidence of the subsequent conduct of the second appellant was wrongly admitted; (6) the learned president was wrong in denying the first appellant his statutory right to a copy of a statement by a witness to the police for the purpose of cross-examination.

Held, dismissing the appeal: (1) as the witness had given evidence against a co-accused in the hope of receiving a pardon, his evidence must be closely scrutinized and must meet the twin tests of credibility and corroboration, i.e. he has to satisfy the court not only that his evidence is in general credible but also that there is independent corroboration in material particulars;

(2) although the learned president had appeared to treat the witness as a peripheral accomplice he in fact treated him as an accomplice and stressed the need for corroboration. The learned president had not misdirected himself in the law and there was no irregularity, but if there was, such irregularity had not occasioned any failure of justice;

(3) the evidence of the witness in this case fully incriminated the first appellant and there was also in this case sufficient evidence in corroboration connecting or tending to connect the first appellant with the crime;

(4) the statement made by the second appellant relating to the discovery of the typewriter was admissible under section 27 of the Evidence Ordinance;

(5) the expert evidence on typewriting was admissible in this case under section 45 of the Evidence Ordinance;

(6) evidence of the subsequent conduct of the second appellant was admissible under section 8 of the Evidence Ordinance;

(7) as the learned president had referred to the police statement of the witness and had come to the conclusion that there was no material for serious challenge to the credibility or reliability of the witness, he had rightly rejected the application for a copy of the statement to be supplied to the first appellant.

Cases referred to:-

(1) *Hussain Umar* v. *Dalipsinghji* A.I.R. 1970 S.C. 5.
(2) *Seah Chay Tee* v. *Public Prosecutor* [1948] M.L.J. 77.
(3) *Daud bin Awang Ngah* v. *Public Prosecutor* [1958] M.L.J. 168.
(4) *Tan Cheng Seng & Anor.* v. *R.* [1948] M.L.J. 148.
(5) *Seet Ah Ann* v. *Public Prosecutor* [1950] M.L.J. 293.
(6) *Sarjit Singh* v. *State of Punjab* [1970] Cr. L.J. 944.
(7) *Subramaniam* v. *Public Prosecutor* [1956] M.L.J. 220.
(8) *Mawaz Khan* v. *R.* [1967] 1 All E.R. 80.
(9) *R.* v. *Baskerville* [1916] 2 K.B. 658.
(10) *Public Prosecutor* v. *Err Ah Kiat* [1966] 1 M.L.J. 9.
(11) *Pulukuri Kottaya* v. *Emperor* (1947) 48 Cr. L.J. 533.
(12) *Hanumanth* v. *State of Madhya Pradesh* A.I.R. 1952 S.C. 343.
(13) *Manabendra Nath Roy* v. *Emperor* A.I.R. 1933 All. 498, 501.
(14) *S.H. Jhabwala* v. *Emperor* A.I.R. 1933 All. 690, 705.
(15) *Bacha Babu* v. *Emperor* A.I.R. 1935 All. 162, 169.

(16) *Chelaji Gomaji* v. *Bai Jashodharabai Shambhudutt Nishir* 60 Bom. L.R. 251.

(17) *Muldowney* v. *Illinois C.R.R. Co.* 36 Iowa 472.

(18) *Chandika Prasad* v. *Emperor* 126 I.C. 684.

(19) *Yohannan* v. *R.* [1963] M.L.J. 57.

(20) *Mohamed Fiaz Baksh* v. *The Queen* [1958] A.C. 167.

MAGISTRATE'S CRIMINAL APPEAL.

Dato David Marshall (*V. L. Kandan* with him) for the first appellant.

Dato David Marshall (*D. P. Vijendran* with him) for the second appellant.

Hassan bin Ishak (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Raja Azlan Shah J.: One Chandrasekaran, a checking clerk attached to the Accountant-General's Department was convicted on two charges of knowingly using as genuine forgeries of two treasury vouchers to the value of $207,630 in contravention of section 4(c) of the Prevention of Corruption Act, 1961 and sentenced to 3 years' imprisonment and fined $2.000. The evidence established that the said vouchers had been forged. He has not appealed. The appellants, both police officers attached to the Special Branch, were charged and convicted of abetting Chandrasekaran under section 4(c) read with section 11(a) of the Act. The first appellant was sentenced to 2 years' imprisonment and fined $2,000 while the second appellant was sentenced to 2½ years plus a fine of $2,000. If they are guilty then I must say that their conduct was iniquitous in the highest degree, deserving the strongest condemnation by every man in this country, for it is essential to the welfare of society that policemen should uphold the law rather than break it when corrupted by greed. A fourth person P.W. 55 was also charged for abetment but the court allowed him to give evidence for the prosecution under section 19 of the Act and at the end of the case he was given a certificate of indemnity.

This case discloses a conspiracy which was carefully planned, deliberately and boldly carried out. Undoubtedly a number of others were concerned in the conspiracy and the *modus operandi* clearly indicates that they were assured of co-operation from Chandrasekaran in the Accountant-General's Department.

The gist of the prosecution case against Chandrasekaran was this. Two forged treasury vouchers, purportedly emanating from the trade division of the Ministry of Commerce and Industry for the purchase of insecticide worth $111,889.50 and $95,740.50 from Messrs. Kee Cheong of No. 43A, Kampong Dollah. Kuala Lumpur, together with forged supporting documents, were presented to the Accountant-General's Department for payment. Chandrasekaran was the only clerk concerned with the detailed checking and he approved them. It is quite clear that, but for Chandrasekaran's connivance in the fraud, the two vouchers could not possibly have been approved. Chandrasekaran's conduct provides ample evidence of his guilt, for it cannot be reconciled with his innocence. I am thus perfectly satisfied that he had been rightly convicted.

A fraud having been perpetrated on the Government, the question arising in this appeal is whether the fraud was the result of a conspiracy; if so, whether each of the appellants was involved in that conspiracy.

The provision relating to abetment of offences under the Prevention of Corruption Act is contained in section 11 of the Act and abetment bears the same meaning as in the Penal Code. Section 107 of the Penal Code brings conspiracy within the definition of abetment as follows: —

"A person abets the doing of a thing who ... *Secondly* — Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing."

And explanation 2 of the section reads:

"Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act."

Conspiracy is defined in section 120A of the Penal Code. In order to constitute the offence of abetment by conspiracy there must be a combination of two or more persons to do, or cause to be done, an illegal act, or an act, which is not illegal, by illegal means and that act or omission must take place in pursuance of that conspiracy and in order to the doing of that thing. It is not necessary that the abettor should himself be directly involved as a participant in the offence committed. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed. In a conspiracy there is a common purpose. Each and every one of the conspirators is aware that he has to play his own part in a united effort to achieve the common purpose, although at times he does not know all the secrets or the means by which the common purpose is to be achieved. The concept of conspiracy is the agreement to work in furtherance of the common purpose. (See *Hussain Umar* v. *Dalipsinghji*[1]).

On this point it is pertinent to refer to the provisions of section 10 of the Evidence Ordinance which reads: —

"Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons, in reference to their common intention after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it."

It will be observed that there must be reasonable ground to believe that two or more persons have conspired together to commit an offence, and that being shown, anything said, done or written by any one of such persons in reference to that common intention may be proved both for the purpose of proving the existence of the conspiracy as also for showing that any such person was party to it.

As already stated there is indubitable evidence in this case of the existence of a conspiracy to defraud

the Government by means of forged vouchers. The appellants were charged with and convicted of abetment of the offence of defrauding the Government. Abetment of an offence includes abetment by conspiracy: therefore the question which I have to consider is whether each of them was a party to the conspiracy, in furtherance of which the common purpose was accomplished. In order to determine this, it is desirable that the cases against the appellants be considered separately.

It is to be noted that the principles applicable in an appeal from a judge sitting without a jury are not the same as those applicable to jury cases. In the former it is for the appellate court to take the whole case into consideration and determine for itself whether the decision of the trial court was justified or whether there had been in fact a failure of justice. An appellate court must not lightly disregard the judgment appealed from but must give special weight to that judgment where the credibility of the witnesses comes into question, although with full liberty to draw its own inference from the facts proved and to decide accordingly.

The case against the appellant No. 1 rests on the evidence of P.W. 55, an accomplice, and the learned president himself stressed the need for corroboration. However, Dato Marshall went further and argued that the learned president was wrong in law in failing to recognise that P.W. 55 was an unconvicted accomplice and an accused person on trial in the same case, who therefore had the strongest possible motive for seeking to exculpate himself at the expense of others. Counsel stressed the proposition that the evidence of a co-accused must be given less weight than that accorded to the evidence of an accomplice and requires stronger corroboration. That proposition was taken from a passage in the judgment of Laville J. in *Seah Chay Tee* v. *Public Prosecutor*[2] but, as pointed out by the Court of Appeal in *Daud bin Awang Ngah* v. *Public Prosecutor*,[3] that passage was *obiter*, since it was not necessary for the determination of the case. The Court of Appeal relied instead on the judgment of the Singapore Court of Criminal Appeal in *Tan Cheng Seng & Anor.* v. *Rex*[4] where it was held that a co-accused giving evidence on his own behalf against a co-accused was not to be regarded as an accomplice and therefore the rule regarding corroboration did not apply. They clearly laid it down that the rule only applied to witnesses for the prosecution.

It was further argued by counsel that, in accordance with well-established practice, P.W. 55 should first have been dealt with by the court before he was allowed to give evidence as a prosecution witness, otherwise his evidence might be influenced by his anticipation of its likely effect on his sentence. (See *Seet Ah Ann* v. *Public Prosecutor*[5] where Abbott J. adopted the established practice in the Criminal Courts of England). P.W. 55 had given evidence under section 19 of the Prevention of Corruption Act. That section may be described as peculiar, unparallelled and unique. It gives an unfettered discretion to the court to require a co-accused to give evidence for the prosecution. For comparison, see section 254 of the Criminal Procedure Code, which gives the public prosecutor a discretion to withdraw a charge against an accused person who, unless good cause is shown, will be acquitted. A witness called under section 19 is entitled to a certificate of indemnity "if the court is of the opinion that the witness makes a true and full discovery of all things of which he is lawfully examined." This, in my opinion, can only be decided after the witness has given evidence and not before, otherwise the provisions of that section would be quite illusory. I am bound to construe the section in the form in which it was enacted. Although the witness was only dealt with after the close of his evidence, I have no doubt that it never was the intention of the legislature to depart from well-established principles of criminal law, that when an accused person gives evidence against a co-accused in the hope of receiving a pardon, his evidence must be even more closely scrutinised. For this reason I hold the view that, whenever an accused person is required to give evidence under section 19 of the Act, he does so in such a state of suspense that he will naturally have every inclination to minimise his own part in the transaction; his evidence must therefore be treated with even greater caution: See *Sarjit Singh* v. *The State of Punjab*.[6] In other words, his evidence must meet the twin tests of reliability and corroboration *i.e.*, he has to satisfy the court not only that his evidence is in general credible, but also that there is independent corroboration in material particulars.

It was also argued that the learned president was wrong in law in treating P.W. 55 as a peripheral occomplice and thereby entitled to more credence than an accomplice. I agree that the learned president appeared to have treated P.W. 55 as a "peripheral" accomplice but I do not see the need for drawing any such distinction. In my view there is only one type of accomplice. By whatever name he is called, an accomplice in fact remains an accomplice and the law with regard to accomplice evidence is unequivocally clear in requiring corroboration by reliable and independent testimony.

He was, however, satisfied that P.W. 55 was merely a front for appellant No. 1 without being aware of the real nature of the criminal design. I cannot say that the learned president had misdirected himself on the law. There is no irregularity, but if it were, such irregularity had not occasioned any failure of justice.

So far as the evidence of P.W. 55 is concerned it fully incriminated appellant No. 1. His evidence consisted of the conversation that took place between himself and this appellant, the part he played in pursuance of the conspiracy and what Leong Chye Kee had told him. The learned president admitted hearsay evidence by P.W. 55 regarding what Leong had told him — Leong had since disappeared — but, be it noted, merely as explaining the relevant conduct of P.W. 55 and not to prove the truth of the statements. As authority for so doing the Privy Council case of *Subramaniam* v. *Public Prosecutor*[7] was cited by him. That in my view was a correct approach. Leong is untraced. He was not a witness in the case. Whatever statements he had made to P.W. 55 were admitted, not for the purpose of establishing the truth of the facts alleged,

but to show the state of mind and conduct of Leong and P.W. 55 and to draw inferences therefrom. (See, further, *Mawaz Khan* v. *Reg.*[6]). The statements admitted established that there was a plot to open a bank account of a fictitious firm dealing in insecticide with the Oversea-Chinese Banking Corporation, Sungei Besi Branch, Kuala Lumpur and their knowledge of it.

P.W. 55's evidence was as follows: Sometime in October 1969, appellant No. 1, who had known P.W. 55 for some 20 years, went to his house. He asked P.W. 55 to find a friend who knew a manager of a Chinese bank for the purpose of opening a business account for a dealer in insecticide. He gave P.W. 55 his office telephone number 87771 and house telephone number 28920, for purposes of contacting him. P.W. 55 took down these numbers in his pocket book, Exh. P58. According to P.W. 55 he rang the appellant from time to time to obtain instructions. P.W. 55 succeeded in getting his friend, Leong Chye Kee, a member of a secret society, who knew a manager of the O.C.B.C., Sungei Besi Branch. The stage was then set whereby indirect contact was made between appellant No. 1 and the bank. This contact was clearly necessary so that the profits of the fraud could be paid into the bank.

The next thing that appellant No. 1 asked P.W. 55 to do was to rent a house, using a fictitious name. On 21st October 1969, P.W. 55 succeeded in renting premises 43A, Kampong Dollah from P.W. 14 using a false name Ho Sin Fan and a false identity card number. P.W. 14 confirmed that P.W. 55 and his wife P.W. 13 negotiated with him for the renting of the said premises. He produced the tenancy agreement, Exh. P18, and the deposit receipt, Exh. P19. It is significant to note that this address was used on the forged vouchers Exh. P4 and P5 and their supporting documents. The connecting link in the chain of events was this address, needed to be used in pursuance of the common purpose. Appellant No. 1 had also asked P.W. 55 to borrow $2,000 in order to open the business account. In October 1969, Lee Thong (P.W. 53) gave P.W. 55 a loan of $2,000 although he could not remember the exact date. That amount was repaid by P.W. 55 in November 1969.

On 22nd October 1969 the appellant No. 1 took P.W. 55 to Weng Wah Press off Pudu Road, Kuala Lumpur where the latter ordered 500 invoices in the name of the fictitious Messrs. Kee Cheong, 43A, Kampong Dollah, Kuala Lumpur, telephone number 25869. The arrangements for this order were made the previous day, though not by P.W. 55. P.W. 16, the proprietor of Weng Wah Press, testified that he issued a receipt, Exh. P20, on the day of the order but could not identify the person who had placed the order or the person who took delivery. He identified Exh. P4C and P5B as the invoices he had printed for the alleged Messrs. Kee Cheong.

On 23rd October 1969 the first forged voucher, Exh. P4, was approved by Chandrasekaran. On 24th October 1969 the Bank Negara cheque for $111,889.50 was prepared and issued. On 27th October 1969 P.W. 55 took Leong Chye Kee to the bank. With the collaboration of an officer of the bank he succeeded in opening a bank account in the fictitious name of Messrs. Kee Cheong of 43A, Kampong Dollah, Kuala Lumpur, using a false name Lim Chuan Chong as sole proprietor and a false identity card number 3006416. It may be noted that there is in fact a shop bearing the name Kee Cheong, but at No. 6, Loke Yew Road, Kuala Lumpur, dealing in provisions. It is further to be noted that the proprietor of that shop is also named Lim Chuan Chong. The identity card No. 3006416 given as that of Lim Chuan Chong in the bank application form belonged to one Shafie bin Mohamed of Johore.

On 29th October 1969 the second voucher Exh. P5 was forged. On 31st October 1969 the first Bank Negara cheque, Exh. P2, was credited into the account of Messrs. Kee Cheong of 43A, Kampong Dollah, Kuala Lumpur in the O.C.B.C., Sungei Besi Branch. On that same day Chandrasekaran approved the second voucher Exh. P5. Between 3rd and 6th November 1969, three amounts totalling $112,000 were withdrawn and distributed between appellant No. 1, P.W. 55, Leong Chye Kee and the officer of the bank. On 3rd November 1969 the second cheque, Exh. P3 for $95,740.50 was prepared and issued and on 6th November 1969 it was credited into the same bank. Various sums of money were subsequently withdrawn, leaving a small balance of $170.

The learned president relied on three pieces of evidence as corroboration implicating appellant No. 1 with the crime. First, the appellant No. 1 told P.W. 55 to contact a friend who knew a manager of a Chinese bank for the purpose of opening a business bank account and he provided P.W. 55 with his own office and house telephone numbers 87771 and 28920. These numbers were confirmed by P.W. 32, an Assistant Controller of Telecommunications, as that of the Ministry of Internal Security as used by the police and of the appellant's house. Secondly, P.W. 13, the wife of P.W. 55, testified that the appellant No. 1 visited their house after her husband had arranged to rent the house at Kampong Dollah and that both left together. Thirdly, the evidence of the document examiner, P.W. 52, who had expressed the opinion that he found scribbles over the figures 87771 and 28920 in P.W. 55's pocket book, Exh. P58.

Counsel has criticised this part of the judgment on two grounds, one of which is, I believe, the main ground of appeal. It was said that the learned president had failed to direct his mind to the question of corroboration of accomplice evidence in that there must be independent testimony connecting the appellant "with the crime" and that such failure has prejudiced the appellant. The answer is that the learned president, after deciding that P.W. 55 was an accomplice and an accused person, used these words:

> "I followed the well-known rule of prudence and practice and required independent testimony corroborating the evidence of Lee (i.e. P.W.55) as regards the identity of the second accused (i.e. appellant No. 1) and the commission of the crime."

This was not a jury trial. If it were, perhaps different considerations would apply. The instant case, however, was tried by an experienced president and after a careful and anxious scrutiny of the whole of his judgment

it is quite obvious to me that he had given effect to the requirement of law that corroboration of an accomplice evidence must be from a reliable and independent source which established not only that a crime had been committed but that it was committed by the appellant. I am of opinion therefore that there are no merits on this point.

Counsel's second point has indeed given me some anxiety. The contention put forward is that the evidence relied on by the learned president as corroboration did not in law constitute corroboration. It will be necessary to examine the evidence and see whether P.W. 55 had been sufficiently corroborated to prove the charge against him beyond all reasonable doubt.

The first piece of evidence relied on by the learned president as corroboration was the pocket book, Exh. P58, in which P.W. 55 had written down the telephone numbers of the appellant. P.W. 55 had alleged that the numbers were given to him by the appellant No. 1 and he noted them down, in his own handwriting. It is true that an accomplice cannot corroborate himself. That was the argument put forward by counsel and I accept it. What P.W. 55 deposed to as a fact constituting corroboration did not come from an independent source. It came from the witness's own mouth. In order to be of any value the fact relied on for corroboration must be established by such reliable and independent evidence as will satisfy reasonable minds that the witness was telling the truth. It was further said that there was no assurance that P.W. 55 did not himself write down the telephone numbers taken from the telephone directory after the appellant was arrested on 6th January 1970, so as to exculpate himself. P.W. 55 was arrested on 15th January 1970. I am afraid it is difficult to swallow this argument at its face value. In fact I am not prepared to accept it at all. There is in my view no explanation consistent with commonsense which would enable any reasonable man to understand why in the world must P.W. 55 implicate anyone, least of all his friend of 20 years' standing, unless he was telling the truth. In so far as this point is concerned, I am no less satisfied than the learned president that P.W. 55 was telling the truth. But, in so far as the learned president found that Exh. P58 was independent testimony that constituted corroboration, I do not agree with him. At its highest, it could be held as a circumstance telling against the appellant, but that, by itself, would certainly not connect him with the crime. I would also say the same regarding the third piece of evidence relied on by the learned president, *i.e.*, the scribbles found over the two telephone numbers.

The second piece of evidence relied on by the learned president as constituting corroboration, stands however, on a different footing. After considering the train of events in the case the learned president found as a fact that the appellant No. 1 had visited P.W. 55 and his wife in October 1969. If this finding of fact can be supported by the evidence, then that affords corroboration of the material part of P.W. 55's story connecting or tending to connect the appellant with the crime. That would be reliable and independent testimony of a circumstantial nature. It showed that this appellant was playing his separate part in one integrated and united effort to achieve the common purpose which in due course he achieved. P.W. 55 had testified that in October 1969 the appellant saw him about the opening of the fictitious bank account. That, in my view, is a fact relevant to the issue — that the appellant was a member of the conspiracy. It is this relevant fact that required corroboration, not the witness who deposed to such fact.

The fact relied on for corroboration need not be direct; it is sufficient if it is merely circumstantial evidence connecting the appellant with the crime. The corroboration must be some supporting evidence rendering it more probable that the story of the accomplice is true than untrue and that is reasonably safe to act upon it. (See *Rex* v. *Baskerville*[9]). After all the object of corroboration is to satisfy the court that the witness is telling the truth. Although the learned president did not in his judgment set out in detail the train of events which established the fact that the appellant saw him in October 1969, I am satisfied that there existed circumstantial evidence of a cogent nature which led to the irresistible conclusion that the appellant did see P.W. 55 in October 1969 and not in November 1969 as claimed by P.W. 13.

Such circumstantial evidence was as follows: On 21st October 1969 premises 43A, Kampong Dollah, Kuala Lumpur was rented to P.W. 55. This fact was confirmed by the landlord, P.W. 14 himself, who produced the tenancy agreement, Exh. P18 and the deposit receipt Exh. P19. On 23rd October 1969 the first forged voucher, Exh. P4 was approved by Chandrasekaran. On 24th October 1969 the cheque for $111,889.50, Exh. P2 was prepared. On 27th October 1969 Leong succeeded in opening a fictitious bank account for Messrs. Kee Cheong with O.C.B.C. Sungei Besi Branch (see Exhs. P13 - P16A). On 24th October 1969 the second voucher, Exh. P5 was forged. On 31st October 1969 Chandrasekaran approved Exh. P5. On the same day Exh. P2 was credited into the O.C.B.C., Sungei Besi Branch. Each item of circumstantial evidence disclosed some incriminating fact, which taken together with other proved facts conclusively proved that the appellant must have seen P.W. 55 in October 1969. The dates revealed the vital period of the conspiracy during which the appellant No. 1 took an active part in preparation for the final blow to be struck. In my view there was reliable testimony of an independent nature which corroborated the testimony of P.W. 55.

Another point was taken by counsel that P.W. 13, the wife of P.W. 55, was herself an accomplice and therefore she could not corroborate her husband, another accomplice. The learned president, for reasons with which I concur, did not regard her as an accomplice. She does not satisfy the definition of an accomplice. According to the evidence she went with P.W. 55 to rent premises 43A Kampong Dollah, Kuala Lumpur. She testified that the appellant came to visit them in November 1969, she went to the bank on two occasions to cash two cheques of $5,000 and $35,000 and on the second occasion Leong gave her $1,000. She said P.W. 55 told her that he had struck a lottery. The

learned president was satisfied that she verily believed her husband's tale. Nonetheless the learned president had carefully considered her evidence and treated it with caution. It is obvious that she had an interest to serve and her evidence therefore must be treated with suspicion and had to be strictly scrutinised. The learned president had not failed to meet this test.

Yet another point was taken by counsel, that her evidence violates the provisions of section 122 of the Evidence Ordinance, but the argument is without substance. Consent of the husband was in fact obtained, as recorded in the notes of evidence, although it was obtained in parts. At all events no reliance was placed on her evidence in order to corroborate the evidence of P.W. 55 that the appellant saw him in October 1969.

To bring home the charge against appellant No. 2 the prosecution sought to prove by circumstantial evidence that he typed Exh. P4C, one of the forged accompanying documents on a typewriter (Exh. P21), which he borrowed from his friend Chief Inspector Abu Hassan bin Ariffin, P.W. 17. If the circumstantial evidence points irresistibly to this one conclusion then it discloses the part played by him in pursuance of the common purpose. I now proceed to examine in detail the evidence in the light of the various criticisms made by defence counsel. There are two aspects to be considered: first, the nature of the evidence and secondly its probative value.

The appellant was arrested on 6th January 1970. On the following day the police recorded a cautioned statement from him, presumably under section 15 of the Prevention of Corruption Act. Two days later a second cautioned statement was recorded. These statements were rejected by the learned president on the ground that they had been obtained by compulsion. The prosecution then sought to put in a portion of the statements by invoking section 27 of the Evidence Ordinance, which reads as follows:

"When any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so much of such information, whether such information amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved."

The learned president admitted it as Exh. P75A. I reproduce that statement:

"One old portable Remington which I borrowed with the implied consent of Ketua Inspector Abu Hassan bin Ariffin who was my neighbour before ... When I went to the house and took the typewriter Enche Abu Hassan was not in the house. I removed the typewriter the following day."

Two complaints were raised by counsel on this issue. It was said that, once the whole statement was rejected under section 15 of the Act, no portion thereof could be admitted under section 27 of the Evidence Ordinance. In any event, counsel submitted, the said statement was not one distinctly relating to the discovery of the typewriter Exh. P21 and therefore the whole of that statement should not have been admitted under section 27 of the Evidence Ordinance.

Section 27 is a concession to the prosecution. It is the express intention of the legislature that, even though such a statement is otherwise hit by the three preceding sections *viz.*, sections 24 - 26 of the Evidence Ordinance, any portion thereof is nevertheless admissible in evidence if it leads to the discovery of a relevant fact. The reason is that, since the discovery itself provides the acid test, the truth of the statement that led to the discovery is thereby guaranteed. Admissibility of evidence under section 27 is in no way related to the making of the confession; rather, such evidence is admitted on clear grounds of relevancy as directly connecting the accused with the object recovered. (See *Public Prosecutor* v. *Er Ah Kiat*[10]). If a statement which would otherwise be hit by section 24 of the Evidence Ordinance is not excluded under section 27, *à fortiori* a statement which would otherwise be hit by section 15 of the Corruption Act cannot be excluded under section 27 of the Evidence Ordinance, because a statement made under section 15 of the Corruption Act is in the nature of one made under section 24 of the Evidence Ordinance.

In my view, however, the statement marked Exh. P75A should not have been admitted. It was tantamount to an admission that

"he borrowed an old Remington with the implied consent of Ketua Inspector Abu Hassan bin Ariffin who was his neighbour before...".

It is a well-established law that a statement concerning the circumstances under which the borrowing of the typewriter took place exceeds the bounds laid down by section 27. The statement purportedly admitted under section 27 not only embraced the place from which the typewriter was obtained but also that it was borrowed without the knowledge of its owner in his absence. (See *Pulukuri Kottaya* v. *Emperor*[11]). However, notwithstanding the improper admission of the statement in Exh. P75A, I am prepared to accept as admissible the fact that the appellant thereby led the police to Ketua Inspector Abu Hassan's house, to which the typewriter Exh. P21 was traced. So much of the information as distinctly led to the discovery of Exh. P21 in Ketua Inspector Abu Hassan's house cannot be challenged. Any evidence of a fact the truth of which cannot be doubted should be admissible. Once, therefore, it is proved that Exh. P21 was used in typing the forged document Exh. P4C, then the fact discovered is naturally most relevant and no rule of evidence should be construed with such rigid pedantry that the court must shut its eye to the truth.

The next piece of evidence which the prosecution sought to adduce was the borrowing of Exh. P21 from Chief Inspector Abu Hassan, P.W. 17 in September/October 1969 which was an active step taken in furtherance of the common purpose. P.W. 17 testified that since 1967 both this appellant and he were living in the police flats at Siew Dor Building, Jalan Scott, Kuala Lumpur. In 1967 both of them were attending a course at the Police Depot and the appellant had occasion then to borrow his typewriter. I reproduce what he further said in his examination-in-chief:

"In 1968 or 1969 he also borrowed my typewriter; I thought it was the end of 1968; cannot remember exactly. When he borrowed the second time I was downstairs and he said he wanted to borrow my typewriter. I told him he could come to my house and get it from any of the occupants since he knew my family very well. I did not see him fetch the typewriter; only sought my permission."

His daughter, P.W. 25, aged 15 years and a Form III student of the Methodist Girls School, Kuala Lumpur said in evidence that on one occasion in September/October 1969 she handed the typewriter to the appellant. Her father was not then in the house. Her evidence was not sworn or affirmed. She was cross-examined by counsel regarding her veracity. The learned president regarded her as a truthful witness. She had known the appellant for years and in my opinion it is inconceivable that the witness who had no reason for false implication could have deposed against the appellant on any other ground save her own experience of having handed the typewriter to him in September/October 1969. In re-examination P.W. 17 said that the appellant was the only person who had borrowed his typewriter. In answer to a question by his counsel, *viz.*, "Apart from borrowing in 1967 and 1968, any other borrowing?" he replied "After hearing my daughter I say it is the third time." He therefore corrected his former evidence by saying that when the appellant sought his permission to borrow his typewriter a second time when he was "downstairs", he meant it was the third time and by necessary inference it was at the end of 1969. That in my view constitutes sufficient corroboration of the daughter's statement that the appellant borrowed the typewriter in September/October 1969. The explanation of the appellant that he borrowed the typewriter at the end of May or beginning of June 1969 for the purpose of typewriting reports in connection with May 13 disturbances did not find favour with the learned president. The learned president was justified in arriving at this conclusion.

The prosecution next proposed to prove that Exh. P4C was typed on Exh. P21. It is convenient at this stage to consider the admissibility of typewriting evidence under section 45 of the Evidence Ordinance. It was submitted by counsel that in India such evidence was held to be inadmissible. The Supreme Court case of *Hanumanth* v. *The State of Madhya Pradesh*[12] was cited in support of the proposition. It is unfortunate that the Indian Supreme Court gave no indication of the grounds for holding such evidence inadmissible beyond merely saying that the "opinions of such experts were not admissible under the Indian Evidence Act as they do not fall within the ambit of section 45 of the Act." That was all they said. There were three earlier decisions of the High Court in India which had not been considered. In *Manabendra Nath Roy* v. *Emperor*,[13] the High Court on an appeal from the sessions court held that evidence as to the fact that the typewriters used in the typing of the various exhibits had certain defects which were clear from the typing of these exhibits was evidence of that fact which could be competently given by an expert who had had an opportunity of examining the documents. The court further held that it was entitled to draw its own conclusion as to the source and authorship of the documents from the whole evidence in the case and was entitled to take into consideration the fact spoken to by an expert witness that there were certain peculiarities in the typing of the documents resulting from defects of the machines by which the documents were typed. In *S. H. Jhabwala* v. *Emperor*,[14] the same court consisting of two judges, while holding the view that the opinion of an expert to the effect that one document had been typewritten on the same machine as another document was not admissible under section 45 of the Evidence Act, remarked that it could ask the witness to explain points in favour of the view whether the two documents had or had not been typewritten on the same machine but that it could not treat the witness's opinion as expert testimony. In the case of *Bacha Babu* v. *Emperor*,[15] the same court consisting of two judges held similar views. In 1956 the High Court of Bombay in its original civil jurisdiction being bound by *Hanumanth's* case disallowed an expert on typewritten documents giving his opinion under section 45 that a pro-note and a memorandum of mortgage were typed on the same typewriter by reference to the similarities or defects between the documents in respect of the typing. The court further refused the expert permission to compare photographic enlargements and measurement of the letters in those two documents in order to arrive at the conclusion that they were made on the same typewriter. (See *Chelaji Gomaji & Co.* v. *Bai Jashodharabai Shambhudutt Nishir*[16]).

I have been asked to follow *Hanumanth's* case because it is said that our Evidence Ordinance is derived from the Indian Evidence Act and therefore whatever the Indian courts decide we ought to follow. The learned author of *Sarkar* on Evidence 11th Edition Vol I p. 504 described the case as an unfortunate decision. *Woodroffe & Ameerali* 12th Edition Vol. 2 p. 1033 too expressed the view that that case may require reconsideration in the light of modern knowledge indicating that detection of forgeries of typewritten documents has become an integral part of the science of questioned documents. The expression "science or art" is elastic enough to be given a liberal interpretation. If the *Hanumanth* decision was based on the premise that typewriting was not specifically mentioned in section 45, then equally there is no mention of handwriting or foot-print or telephony and yet the evidence of handwriting, foot-print or telephonic experts has been held admissible. So also of ballistic or medical experts who too have not been mentioned in section 45. It is sufficient to mention that the Indian Supreme Court decision was a departure from English and American decisions on the subject. In my view, and I say it without any hesitation, expert opinion on typewriting is as much a matter of science study as handwriting and finger-print evidence. I would therefore adopt what was said in *Muldowney* v. *Illinois C.R.R. Co.*[17] thus: —

> "The opinion of witnesses possessing peculiar skill is admissible whenever the subject-matter of inquiry is such that inexperienced persons are not likely to prove capable of forming a correct judgment upon it without such assistance; in other words, when it so far partakes of the nature of science, as to require a course of previous habit or study in order to the attainment of a knowledge of it, and that the opinions of witnesses cannot be received when the inquiry is into a subject-matter, the nature of which is not such as to require any particular habits or study in order to qualify a man to understand it. If the relations of facts and their probable results can be determined without special skill or study, the facts themselves must be given in evidence, and the conclusions or inferences must be drawn by the jury."

Our courts are perfectly entitled to refer to any appropriate treatise on works of science. See sections 57 and 60 of the Evidence Ordinance. *Osborn*, the leading American authority on questioned documents, points out:

"The increasing use of the typewriter for the production of fraudulent writings of many kinds has certainly created an urgent necessity for means that will lead to the correct identification of these documents, the determination of their dates, and the discovery of their authors..... It is especially important, however, that those whose interests are attacked by documents of this kind should know first, that typewriting can sometimes be positively identified as being the work of a certain individual typewriting machine and second, that the date of a typewriting in many cases can be determined with certainty and positively proved. In many cases the discovery of these two facts gives information to those who try cases in Courts of Law which enable them to expose pretentious fraud and prevent miscarriages of justice.... The identification of a typewritten document in many cases is exactly parallel to the identification of an individual who exactly answers a general description as to features, complexion, size etc. and in addition matches a detailed list of scars, birth-marks, deformities and individual peculiarities."

It is not without precedent that when our courts strongly feel that a decision of a court of different jurisdiction cannot be supported we have not hesitated to say so. In my view the Supreme Court went too far in refusing to allow typewriting evidence under section 45. I do not propose to perpetuate the unfortunate effects of *Hanumanth's* case; few can have survived so precariously for so long. The winds of change must be heeded in the corridors of the courts if we in the law are to keep abreast of the times. I would accordingly hold that the opinion of the typewriting expert was admissible under section 45 of the Evidence Ordinance.

The expert took 5 specimen typescripts from Exh. P21 (Exh. DS(i)—(v)) at two different points of time. By using a stereoscopic microscope he compared them with Exh. P4(C) and found that both were similar in size and design of the types and in alignment and weight of impressions. After giving allowance for a number of variable facts which might have caused similarities or differences to appear in the specimen obtained from the same typewriter, e.g., kind of paper used, differences in ribbon, kind of backing, and also not excluding the possibility that another similar typewriter would have developed the same defects as found in Exh. P4C, he was of the opinion that the prosecution evidence was consistent with the typescripts on Exh. P4C being made on Exh. P21. The expert said he exercised his own discretion in applying the standards with regard to the typewriting identification. He found double impressions on the specimen typescript he obtained from Exh. P21 *i.e.*, Exh. DS(i)—(v) and in the witness box he circled in ink and initialled examples of double impressions on Exh. DS(ii) and (v). He further circled in ink and initialled the double impressions he found on Exh. P4C. The expert holds a degree of Bachelor of Science (Honours) and had attained specialised training in document examination for 2 years. He is now with the Department of Chemistry and his evidence has been accepted in the courts in this country, Singapore and Sarawak.

With regard to the evidentiary value of expert evidence it is of course true to say that the court cannot delegate its authority to the expert but has to satisfy itself as to the value of such evidence in the same manner as it has to weigh any other evidence. This is achieved by examining the expert as to the extent of his experience in typewriting identification and how much study and research he had given to the subject. An appellate court is in much the same position as the trial court to appreciate this point although I must say that the science of typewriting identification has not developed to a stage of exactitude as that of finger-prints and therefore complete reliance cannot be placed on the evidence of the expert on such a subject. Nonetheless, there are cases, as here, where it is a weighty piece of evidence which clearly can be taken into consideration as lending support to the conclusion arrived at from other evidence external or internal, though by itself it would not be sufficient to carry conviction.

Evidence that the typewriter Exh. P21 had certain peculiarities, such as double impressions which were clearly discernible in the various exhibits, is evidence of a fact which can be competently given by P.W. 52 who had had an opportunity of examining the documents. The court, after considering the whole of the evidence, is entitled to draw its own conclusion as to the source and authorship of the documents and is entitled to take into consideration the fact spoken to by the expert that there were certain peculiarities in the typing of the documents resulting from defects of the machine by which the documents were typed. The learned President reviewed the whole of the evidence of the expert and he accepted it as reliable. He admitted it as evidence of surrounding circumstances. I have also examined the double impressions found on the exhibits with the assistance of a magnifying glass and I do not doubt the evidence of the expert as reliable. It may be observed here that apart from the evidence of P.W. 52 as to the peculiarities in the typewriter Exh. P21, there is evidence *aliunde* to establish that the appellant was a member of the conspiracy. Unless he was a member of the conspiracy he would not be in a position to know and use the fictitious name and address of Kee Cheong, 43A, Kampong Dollah, Kuala Lumpur on the forged document, Exh. P4C. There was other extrinsic evidence that he borrowed Exh. P21 from P.W. 17 at the crucial period of the conspiracy.

The last piece of circumstantial evidence against appellant No. 2 was evidence of subsequent conduct. The prosecution led evidence that this appellant told his office colleagues P.W. 30 and P.W. 31 of his purchase of a $1,000 diamond ring for his wife from alleged turf club winnings and evidence of payment of outstanding bills of about $1,500. The evidence of subsequent conduct is relevant under section 8 of the Evidence Ordinance and may properly be taken into account, after the prosecution has established the guilt of the accused, to reinforce the satisfaction of the court as to the proof of guilt made out by the prosecution case. (See *Chandika Prasad* v. *Emperor*[18]).

In a criminal case the conduct of an accused person is relevant against him under section 8 of the Evidence Ordinance. Therefore where the accused

volunteered a statement presenting facts in a light favourable to himself, such conduct is relevant and can be held to be incriminatory only where it is open to no other reasonable explanation but of guilt. Of course, this category of conduct is not conclusive. It does not necessarily follow therefrom that he is guilty, any more than that an accused person making a false statement to enhance his appearance of innocence thereby necessarily provides proof of his guilt. It is only evidence which must, like all other evidence, be considered by the tribunal on a question of fact. Therefore such evidence is admissible where it lends support to show that the accused is guilty. In this case the appellant volunteered a statement to P.W. 30 in November 1969 that he won about $5,000 at the races. He also volunteered a statement to P.W. 31 on the second day of Hari Raya that he bought a $1,000 diamond ring for his wife a few days before Hari Raya (that was in December 1969) from his alleged turf club winnings of $2,500. There was no cause to make those statements, except for obvious reasons. The learned president considered this conduct of the appellant as a circumstance telling against him and he had to explain it when called upon to make his defence. The appellant called Inspector Sunny Tait as his witness, but the learned president did not consider him a witness of truth. I share the same view. I have studied Inspector Sunny Tait's evidence very carefully, though without the advantage that is gained by seeing and hearing the witness. A study of the record is no adequate substitute for the gradual unfolding of evidence presented by a witness whom the court can see and hear. Gestures, changes of intonation, pauses and all those incidents which enabled the learned president to assess the credibility of the witness cannot be reproduced in the notes of evidence. I am satisfied that Inspector Sunny Tait was not a convincing witness. His evidence contains inherent weaknesses which become more apparent the more carefully one probes. The appellant did say in evidence that he won about $2,500 from two races, the 8th and the 9th, but that it was the last race which had brought him winnings on 20 win and 20 place tickets. He remembered only the names of two horses but was unable to state which particular horse had brought him the windfall, nor did he mention the amounts paid for a win and for a place. A story which left entirely unexplained such important facts such as these cannot be accepted as reasonable or probable. The defence does not hold water. I have yet in fact or in fiction to come across a more impudent defence than that raised by this appellant.

On 13th November 1969 appellant No. 2 paid his mess bills amounting to $396.35 cts. which he had been unable to settle since August 1968. On the same day, he also made full payment of $816.70 cts to Joo Lee Finance Co. in respect of his car loan. On 30th November 1969 he paid $300 to a moneylender in respect of a loan which he and Chandrasekaran had jointly taken in July 1968. In December 1969 he bought his wife a diamond ring which according to him cost $930. Adding together these various sums of money which he had spent in November/December 1969, the total amount came to $2,442.05, a very substantial figure of nearly $2,500. That was the amount he said he had won at the races. That was the money he said he had paid towards all his outstanding debts and the purchase of the diamond. But the learned president, for reasons which I do not hesitate to concur in, had found that appellant No. 2 had won no such sum at the races. In the circumstances the appellant's explanation of this issue was not rebutted.

I am satisfied that there was a chain of evidence so far complete as not to leave any reasonable doubt as to the guilt of appellant No. 2. The circumstantial evidence established that in all human probability the typing of Exh. P4C must have been done by him. The evidence of his subsequent conduct is further proof which fortified the prosecution case as to his guilt.

I have dealt with the major portion of the grounds of appeal advanced on behalf of appellant No. 1. All other grounds, except one, are in my opinion of no consequence and do not assist the appellant in any way. That one is:

> "The learned president applied the wrong test when exercising his discretion under the provisions of section 113 of the Criminal Procedure Code, on the request of the appellant to act thereunder in respect of the statement made by P.W.55 — Lee Kim Ying — to the police in the course of police investigation, whereby the appellant was denied his statutory right of access to important material for cross-examination."

Counsel advanced two propositions *viz.*, that, as the police statement made by the appellant on 16.1.1970 under section 15 of the Corruption Act was a confession, the defence was entitled as of right to be given access to that statement; failing that argument, it was submitted that it was a statement falling within the ambit of section 113 of the Criminal Procedure Code and that the learned president had applied the wrong test when exercising his discretion under it.

The fallacy of the first argument is that it ignores the intention of the legislature as expressed in the section. Subsection (1) of section 15 of the Act permits the statement of an accused person to be admitted in evidence at his trial under the Act and if he gives evidence on his own behalf, that statement may be used in cross-examination and for purposes of impeaching his credit. In my view the subsection is quite specific. It applies only to the statement of an accused person; he must be an accused person when the statement is intended to be used against him. If he turns what in English law is termed "King's Evidence" he is no longer an accused person and in the circumstances the subsection does not apply. The correct approach would be to invoke the provisions of section 113 of the Criminal Procedure Code. That brings me to counsel's second argument. Has the learned president applied the wrong test? Let us then see the procedure which he adopted. That appears on page 299 of the notes of evidence:

> "Kandan — applying to have statement made by witness on 16th night. To test his credibility. Court adjourns to read statement. Court sits again: bearing in mind that he is a peripheral accomplice he is substantially accurate."

Section 113(1) of the Criminal Procedure Code confers an unfettered discretion on the court to direct the accused to be furnished with a copy of the police

statement for purposes of impeaching credit. If an accused or his counsel has reason to believe that the evidence which the witness gives in the witness box differs in material particulars from the police statement he or his counsel can request the court to refer to a particular passage or passages in the statement and the court is obliged to refer to them. Failure to refer to such statement is a denial of justice. (See *Yohannan* v. *R.*).[19] The court then exercises its discretion whether to furnish the accused with a copy of the police statement. The true test when exercising such discretion seems to be that the police statement must afford material for serious challenge to the credibility or reliability of the witness on matters relevant to the prosecution case. (See *Mohamed Fiaz Baksh* v. *The Queen*[20]). If the court finds there is no material to afford a serious challenge to the credibility or reliability of the witness, the accused need not be furnished with a copy of the police statement. In the present case the learned president at the request of counsel had referred to the police statement and he had come to the conclusion that there was no material for serious challenge to the credibility or reliability of P.W.55. I do not think that, merely because he had rejected the application, it can be said that he had failed to exercise his discretion judicially and that he had applied the wrong test in applying the provisions of section 113 of the Criminal Procedure Code.

I have also considered the other grounds of appeal advanced on behalf of appellant No. 2. I do not consider that there are merits in any of them.

The appeal by both the appellants against conviction is dismissed.

I am afraid that the sentence of 2 years' imprisonment imposed by the lower court on appellant No. 1 is out of line when compared with the sentence imposed on Chandrasekaran. What I am stressing as significant is that the learned president found that he was the brain behind the conspiracy, but he did not give expression to it in his sentence. In the circumstances it is only right and proper that he deserves no lesser sentence, if not a heavier one than that imposed on Chandrasekaran. Giving the matter my best consideration I enhance his sentence from 2 years' to 3 years' imprisonment. I do not propose to interfere with the sentence of 2½ years' imprisonment imposed by the lower court on appellant No. 2.

Appeal dismissed.

Solicitors: *Shearn, Delamore & Co.; Athi Nahappan & Co.*

RATTAN SINGH v. PUBLIC PROSECUTOR

[A.Cr.J. (Syed Agil Barakbah J.) November 27, 1970]

[Seremban — Criminal Appeals Nos. 3 & 4 of 1969]

Bribery and Corruption — Accomplice evidence — Whether witness an accomplice — Whether witness comes under protection of s. 18 of the Prevention of Corruption Act, 1961 — What constitutes corroboration — Burden of proof on accused — Prevention of Corruption Act, 1961, ss. 4 and 18.

This was an appeal against the conviction of the appellant on a charge under the Prevention of Corruption Act, 1961. The main ground of appeal was whether the main witness to the charge on which the appellant was charged, was an accomplice and whether as such he came within the protection of section 18 of the Act. The learned president was of the view that it was too early to treat the witness as an accomplice considering the frame of mind that he was in and that mere concurrence short of some actual participation in the crime was not sufficient to make the person an accomplice.

Held: allowing the appeal, (1) in this case the witness played a more active part in the transaction, apart from the bare corrupt payment as he was quite prepared to bribe the appellant and negotiated with other persons for the purpose, and therefore he was not protected by section 18 of the Prevention of Corruption Act and the ordinary rules as regards accomplices therefore applied;

(2) the learned president misdirected himself when he concluded that it was too early a stage to treat the witness as an accomplice;

(3) the learned president was wrong in holding that the silence of the appellant when questioned by the police pointed to his guilty mind;

(4) in the circumstances of this case and taking into consideration the evidence of the appellant and his witness and in the light of the various irregularities in the prosecution case, the learned president had failed to consider the defence adequately in accordance with accepted principles and therefore the appeal must be allowed.

Cases referred to:-

(1) *Daimon bin Banda* v. *Public Prosecutor* [1953] M.L.J. 23.

(2) *Soosay Dass* v. *Public Prosecutor* [1951] M.L.J. 57.

(3) *Lionel de Silva* v. *R.* [1956] M.L.J. 203.

(4) *R.* v. *Mullins* 3 Cox C.C. 526.

(5) *R.* v. *Price* [1968] 2 All E.R. 282.

(6) *Trowell* v. *Public Prosecutor* [1946] M.L.J. 41.

(7) *R.* v. *Ambler* [1938] 2 W.L.R. 225.

(8) *Davies* v. *Director of Public Prosecutions* [1954] 1 All E.R. 507.

(9) *R.* v. *Whitehead* [1929] 1 K.B. 99.

(10) *Mohamed Ali* v. *Public Prosecutor* [1962] M.L.J. 230.

(11) *Ah Mee* v. *Public Prosecutor* [1967] 1 M.L.J. 220.

(12) *R.* v. *Prater* [1960] 1 All E.R. 298.

(13) *R.* v. *Norman Davis* 43 Cr. App. R. 215.

(14) *R.* v. *Naylor* 23 Cr. App. R. 177.

(15) *R.* v. *Leckey* 29 Cr. App. R. 128.

(16) *Satkuru* v. *Public Prosecutor* F.M. Criminal Appeal No. 12 of 1960 (unreported).

(17) *Public Prosecutor* v. *Yuvaraj* [1969] 2 M.L.J. 89, P.C.

MAGISTRATE'S CRIMINAL APPEAL.

Edgar Joseph Jr. (*Chan Choong Tak* with him) for the appellant.

Ahmad bin Abdul (Deputy Public Prosecutor) for the respondent.